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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

CRIMINAL APPEAL NO.1021/2002

APPELLANT Santosh Kumar Marai, S/o Mangloo Ram Marai, Aged about 23 years, R/o Village Rajnagar, P.S. Nagarnar, District Bastar (C.G.)

Vs

RESPONDENT State of Chhattisgarh.

Present:
Mr. Abhay Tiwari, Advocate for the appellant.
Mr. N.K. Mehta, Panel Lawyer for the respondent-State.

ORAL JUDGMENT
(9th August, 2007)

Per Dhirendra Mishra, J:

This appeal is directed against the judgment of conviction and order of sentence dated 5th August, 2002 passed by learned Special Judge, under N.D.P.S. ACT, Bastar at Jagdalpur in Special Case No.14/02 whereby learned Special Judge has convicted the appellant under Section 20 (b) of the Narcotics Drugs & Psychotropic Substances Act (for short 'the Act') and sentenced him to undergo R.I. for 3 years & 6 months and to pay a fine of Rs.7,000/-, in default of payment of fine to further undergo R.I. for 09 months.

Case of the prosecution, in brief, is that on 28.4.2002 the informer gave information that a person carrying cannabis in a packet is sitting in the bus stand, the said information was recorded in Sanha and thereafter a

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

panchanama of Ex.P-3 was prepared for proceeding under Section 42 (2) of the Act, which was sent to the Superintendent of Police. The Investigating Officer proceeded to the place where the appellant was found carrying bags. On interrogation the appellant confessed that he is carrying Ganja and he is taking the same for the purposes of sale. A notice was given to him, as required under Section 50 of the Act, and after obtaining his consent search was made and in the said search 8.300 Kilograms of cannabis was seized in two packets of polythene after observing the formalities required under the law. On the basis of above seizure, charge sheet was field under Section 20-B of the Act and the appellant was convicted as mentioned herein above.

Learned counsel for the appellant submits that both the seizure witnesses namely PW-1 Karunakar & PW-4 Narayan Singh have not supported the prosecution case and they have turned hostile and the conviction of the appellant is based on the statement of Investigating Officer Shri Tillu Singh Thakur (PW-2), who has conducted the investigation and filed the charge sheet. It is further contended that there are major contradictions in the statements of panch witnesses and investigating officer, even then the trial court ignoring the material contradictions in the version given by the panch witnesses and investigating officer relying upon the statement of investigating officer convicted and

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

sentenced the appellant, as mentioned above. Reliance is placed on **2002 Cr.L.J. 579 Bahadur Singh Versus State of M.P.**

On the other hand, learned Panel Lawyer for the State submitted that where the evidence of Investigating Officer inspires confidence and the accused in his cross-examination has not been able to suggest any ill-will or mala fide on the part of the Investigating Officer, his testimony cannot be discarded solely on the basis of the panch witnesses, who have turned hostile. He further submits that PW-1 Karunakar, who is panch witness, has admitted that cannabis was seized in his presence though he has turned hostile and has made contradictory statement, however, he has not denied his signatures in the document of Ex.P-1, informer's report Ex.P-7, Panchnama prepared under Section 42 (2) of the Act (Ex.P-3), search panchnama (Ex.P-4), notice under Section 50 of the Act (Ex.P-5), recovery memo (Ex.P-6) etc. Similarly PW-4 Narayan Singh is also the witness of seizure and he has also admitted that cannabis was recovered in his presence and the accused was also present at the place of recovery.

I have heard learned counsel for the parties.

In the matter of Bahadur Singh (supra) the Hon'ble Supreme Court considering the doubtful entries in Ex.P-15 regarding the amount and as to when same were made has held that under the aforesaid circumstances the appellant cannot be convicted on the sole testimony of the police witnesses and extended benefit of doubt to the appellant. However, in the instant

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	case Investigating Officer Tillu Singh (PW-2) has detailed the procedure adopted after the information was received by him from the informer regarding commission of offence and during investigation, and from which it is amply clear that requirements under the Act for search and seizure of the contraband have been duly followed. The defence in the cross-examination of this witness has not been able to bring such circumstance which may throw a doubt in the veracity or genuineness of the investigation. Statement of this witness finds corroboration from the statement of Narayan Singh (PW-4) who is also a witness of seizure and has stated that when the seizure was effected, PW-1 Karunakar, other panch witness and accused was also present there. The seizure witnesses, though they have been declared hostile, but they have admitted their signatures over the documents prepared during the investigation and in these circumstances I am of the considered opinion that the court below has not committed any illegality or infirmity by reaching to the conclusion that the appellant was involved in the crime in question. In the result, the appeal being devoid of substance is liable to be dismissed and it is hereby dismissed. Sd/- DHIRENDRA MISHRA Judge	
Roshan/-		